

LOCAL AGENCY FORMATION COMMISSION COUNTY OF SAN BERNARDINO

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DATE: MAY 5, 2006

FROM: SAMUEL MARTINEZ, LAFCO Analyst

TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: Agenda Item #9: LAFCO SC#280 – Irrevocable Agreement to Annex No. 06-00004, City of Fontana for Sewer Service (APN 0237-052-24)

INITIATED BY:

City of Fontana, on behalf of property owner

RECOMMENDATION:

The staff recommends that the Commission approve LAFCO SC#280 by taking the following actions:

1. For environmental review, take the following actions as a responsible agency:
 - Certify that the Commission has reviewed and considered the environmental assessment and the Mitigated Negative Declaration prepared by the County of San Bernardino for a Conditional Use Permit to establish a proposed 13,500 sq. ft. speculative industrial metal storage building on 0.86 acres, and found them to be adequate for Commission use;
 - Determine that the Commission does not intend to adopt alternatives or mitigation measures for this project; that all mitigation measures are the responsibility of the County of San Bernardino and/or others, not the Commission; and,
 - Note that this proposal is exempt from Department of Fish and Game fees because the filing fee was the responsibility of the

County, as CEQA lead agency, and direct the Clerk to file a Notice of Determination within five (5) days of this action.

2. Approve SC#280 authorizing the City of Fontana to extend sewer service outside its boundaries to Assessor Parcel Number (APN) 0237-052-24.
3. Adopt LAFCO Resolution #2921 setting forth the Commission's findings, determinations and approval of the agreement for service outside the City of Fontana's boundaries.

BACKGROUND:

The City of Fontana has submitted a request for approval of an "Irrevocable Agreement to Annex" that outlines the terms by which it will extend sewer service outside its boundaries in compliance with Government Code Section 56133. The agreement relates to a single parcel, APN 0237-052-24, generally located on the north side of Slover Avenue (15754 Slover Avenue), one parcel east of Poplar Avenue, within the City's southern sphere of influence. Attachment #1 provides a location and vicinity map of the site along with a map outlining the location of the infrastructure to be extended.

The County of San Bernardino Land Use Services Department has processed a Conditional Use Permit for this contract area to establish a 13,500 sq. ft. speculative industrial metal storage building on 0.86 acres. The Conditions of Approval adopted for this project on September 30, 2003 includes the requirement to connect to the City of Fontana's sewer facilities prior to issuance of building permits (Conditions 27 & 29). Water service will be provided by the Fontana Water Company. A copy of the Conditions of Approval is included as Attachment #3 to this report.

Between September 2003 and the submission of the contract to the City in February 2006, the City of Fontana revised its annexation and out-of-agency service policy through adoption of Resolution No. 2005-03 (a copy of which is included as Attachment #4 to this report). The policy, as adopted January 18, 2005, identifies the position of the City that the preferred option was for all new developments to annex to the City in order to receive service. SC#280 is contiguous to the City's boundaries along Slover Avenue and could be annexed. Instead, in this case, the City submitted an irrevocable agreement to annex and is requesting that it be approved for the following reasons: (a) the landowner cannot wait for annexation to be completed since the County has already issued a building permit, construction is underway and the connection to sewer is needed, and (b) the area is within one of the City's island annexation areas (Island #19) that LAFCO is currently processing and is anticipated to be part of the City sometime in the near future.

LAFCO's concern is that since annexation was not required, Section 4 of the policy adopted in Resolution No. 2005-03 outlines the requirement that for new development, that is either contiguous or non-contiguous, the following would apply:

“At the discretion of the City Council, a Pre-annexation agreement may be utilized for new developments for areas that are contiguous or not contiguous to the City limits. An applicant may wish to consider a pre-annexation agreement to outline land use designations, development standards, conditional use permits approved by the County of San Bernardino, donation of right-of-way easements, sewer service and other requirements as necessary.”

However, in this case the City submitted an “Irrevocable Agreement to Annex” instead of a pre-annexation agreement and according to the City that decision was made by City staff, not the City Council. City staff indicated that the Annexation Policy was overridden since pre-annexation agreements are generally used for more complex developments that cover a range of items other than sewer service, such as City development standards, right-of-way dedications, land use designation, etc. In addition, City staff pointed out that since the County had already issued a building permit and construction has been on-going since June 2005, there was nothing to negotiate on a pre-annexation agreement.

LAFCO staff has concerns on its understanding of the implementation of the City's policy regarding:

- a) the City's use of an irrevocable agreement to annex rather than a pre-annexation agreement, which the policy requires for new development contiguous to the City's boundary which is utilizing sewer services, and
- b) the decision to serve the parcel through an agreement was made by City staff instead of the City Council as the policy appears to require.

In the present case, the area proposed for receiving service by contract is within the area of Island Annexation #19 of LAFCO 3048 – Reorganization to Include City of Fontana Annexation No. 168. The annexation is anticipated to be completed in the fall of 2006, while the most expedient response to the service issue is the authorization of the Irrevocable Agreement to Annex through approval of LAFCO SC#280. LAFCO staff will work with the City of Fontana staff to achieve a better understanding of its out-of-agency service policies as adopted through City of Fontana Resolution No. 2005-03.

The City's application indicates that the parcel will be served through an existing lateral connection from the existing 12-inch sewer main in Slover Avenue. Pursuant to the Commission's application requirements for service contracts, information has been provided regarding all financial obligations for the extension of service outside the agency's boundaries. The City of Fontana has submitted an estimated cost of \$15,506.20 in sewer fees and charges for the extension of service to the parcel. The City's sewer fees are based on the number of equivalent dwelling units (EDU's); however, since the project is for a proposed industrial development, the computation for EDU's is based on the number of plumbing fixtures. The following is a table with a detailed calculation of the fees:

Equivalent Dwelling Units (<i>Number of plumbing fixtures</i>)	42 x 0.0741 (City Rate)=	3.1122 EDUs
Facilities Expansion Fee (pass thru fee to IEUA)	\$4,000 x 3.1122 EDU's	\$12,448.80
Sewer Connection Charge	\$770 x 3.1122 EDU's	\$2,396.39
Sewer Deposit	\$34.06 x 3.1122 EDU's x 4 mos. (mo. sewer rate) x 1.5 (rate outside City)	\$636.01
Sewer Permit	1 permit x \$25	\$25.00
TOTAL		\$15,506.20

In addition, the applicant will be responsible for the entire cost of the construction, installation, and connection of the lateral to the sewer main, as well as the payment of the LAFCO processing fee. Also, as reflected in the sewer deposit, future users of the sewer service will be charged 1.5 times the in-City monthly rate.

Staff has reviewed this request for the provision of sewer service by the City of Fontana outside its corporate boundaries against the criteria established by Commission policy and Government Code Section 56133. The parcel to be served is within the sphere of influence assigned the City of Fontana and is anticipated to become a part of the City through completion of LAFCO 3048 in the fall of 2006. The development of the speculative industrial metal storage building requires that it receive sewer service, which is only available from the City of Fontana. Staff supports the City's request for authorization to provide sewer service to the proposed project since its facilities are adjacent to the anticipated development, there is no other existing entity available to provide this service within the area, and the most expedient response to the service issue is through approval of the Irrevocable Agreement to Annex in anticipation of the completion of LAFCO 3048.

FINDINGS:

1. The Conditional Use Permit (CUP) approved for the project area, identified as APN 0237-052-24, allows for the construction of a 13,500

square foot speculative metal storage building. The County's approval of the CUP was provided September 30, 2003. The Irrevocable Agreement to Annex was signed by the property owner on January 25, 2006 and by the City Manager of the City of Fontana on April 11, 2006. The territory is within the sphere of influence assigned the City of Fontana and is anticipated to become a part of that City through completion of LAFCO 3048. The parcel will receive its water service from the Fontana Water Company. The application requests authorization to receive City of Fontana sewer service.

2. The Irrevocable Agreement to Annex No. 06-00004 being considered is for the provision of sewer service by the City of Fontana to APN 0237-052-24, located on the north side of Slover Avenue (15754 Slover Avenue), one parcel east of Poplar Avenue. This contract will remain in force in perpetuity for the proposed development or until such time as the area is annexed. Approval of this application will allow the property owner and the City of Fontana to proceed in finalizing the contract for the extension of this service through recordation.
3. The fees charged this project by the City of Fontana for sewer service are identified as totaling \$15,506.20. Payment of these fees is required prior to connection to the City's sewer facilities. In addition, the property owner shall bear all costs to complete improvements needed to extend the sewer service to the proposed development.
4. In May and September 2003, acting as the CEQA lead agency, the County prepared an environmental assessment for a Conditional Use Permit to establish a proposed 13,500 sq. ft. speculative industrial metal storage building on 0.86 acres. The County's assessment indicates that the project would not have a significant effect on the environment through its development under the Conditions of Approval that has been approved for the proposed project.

LAFCO's Environmental Consultant, Tom Dodson and Associates, reviewed the County's Initial Study and the Mitigated Negative Declaration issued for the proposed project. Mr. Dodson's analysis has indicated that the County's Initial Study and Mitigated Negative Declaration are adequate for the Commission's use as a CEQA responsible agency. The Commission will not be adopting alternatives or mitigation measures for this development; all mitigation measures are the responsibility of the County of San Bernardino and/or others, not the Commission. Attachment #5 provides a copy of Mr. Dodson's response and recommendation regarding the Commission's review and necessary actions to be taken.

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Attachments:

1. Vicinity Map and Map of the Contract Area
2. City of Fontana's Application and Contract
3. County's Conditions of Approval for the Conditional Use Permit to Establish a Proposed 13,500 Sq. Ft. Speculative Industrial Metal Storage Building on 0.86 Acres
4. City of Fontana Resolution No. 2005-03
5. Tom Dodson and Associates Response Including the County's Environmental Documents for the Conditional Use Permit
6. Draft Resolution #2921